

Act shall be interpreted to preclude the use of voting machines in any such election.

Sec. 9. In any such election each voter shall vote for only one candidate for each such position. The candidate receiving the highest number of votes in each respective position voted upon at any such election shall be entitled to serve as a Trustee on said Board, holding the position thereon to which he or she, as the case may be, shall have been so elected.

Sec. 10. If any section, sentence, clause, phrase or word of this Act is for any reason held to be invalid, the validity of the remaining portions of this Act shall not be affected thereby, it being the intent of the Legislature that no portion of this Act shall become inoperative by reason of the invalidity of any other portion.

Sec. 11. All laws and parts of laws, insofar as they may be in conflict herewith, are hereby repealed.

Sec. 12. The importance of this Act and the near approach of elections for School Trustees in certain school districts included within the terms of this Act, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read in each House on three (3) several days be suspended; and the same is hereby suspended, and this Act shall be in force and take effect from and after its passage, and it is so enacted.

Passed the Senate, March 26, 1957: Yeas 28, Nays 0; passed the House, March 27, 1957: Yeas 138, Nays 0.

Approved April 1, 1957.

Effective April 1, 1957.

USE OF PUBLIC WATERS—CANCELLATION OF UNUSED PERMITS OR CERTIFIED FILINGS

CHAPTER 39

H. B. No. 145

An Act amending Chapter 352, General Laws, Regular Session, Fifty-third Legislature, 1953 (codified as Articles 7519a and 7519b, Vernon's Civil Statutes of Texas), so as to declare as presumably abandoned all certified filings heretofore filed with and permits heretofore issued by the Board of Water Engineers and permits hereafter issued by the Board of Water Engineers or its successor, which certified filings and permits authorize the appropriation of public waters, when no part of the waters authorized to be appropriated has ever been put to beneficial use at any time during a ten-year period preceding the effective date of this Act or the date of cancellation proceedings authorized hereby; providing for cancellation by the Board of certain unused portions of permits and certified filings under certain conditions and in the manner herein specified; requiring public hearings before cancellation; providing for notice before hearing and the manner thereof; affording an opportunity to present evidence at such public hearing; allowing a holder to retain an appropriation to the extent that he has conservation storage; exempting those certified filings held by cities to the extent that such filing allows diversion for municipal purposes; declaring that failure to initiate proceedings to cancel shall not validate or enhance a certified filing or permit and requiring a five-year lapse of time between cancellation proceedings against a particular permit or certified filing; defining certain terms; providing for appeals from orders of cancellation and partial cancellation; repealing all conflicting laws and providing a saving clause; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Chapter 352, General Laws, Regular Session, Fifty-third Legislature, 1953, being codified as Articles 7519a and 7519b, Vernon's

Civil Statutes of Texas,⁵⁸ is hereby amended so as to hereafter read as follows:

"Article 7519a.

"1. All permits for the appropriation and use of public waters heretofore issued by the Board of Water Engineers of the State of Texas, at least ten (10) years prior to the effective date of this Act or which shall have been issued at least ten (10) years prior to the date of the cancellation proceedings herein authorized, or certified filings filed with said Board in accordance with the provisions of Section 14 of Chapter 171, Acts of the Thirty-third Legislature of Texas, 1913, as amended, which said permits and certified filings authorize the appropriation and use of public waters, and under which no part of the water authorized to be withdrawn and appropriated has been put to beneficial use at any time during a period of ten (10) consecutive years next preceding the effective date of this Act or the date of the cancellation proceedings herein authorized, whichever is later in time, shall be presumed to have been wilfully abandoned in that the holder has not been diligent in applying any of such unused water to beneficial use under the terms of the permit or certified filing for each year during the ten-year period and has not been justified in such non-use for each year during the ten-year period. When the Board finds that its records do not show that any water has been beneficially used under any such permit or certified filing at any time during such ten-year period, it shall cause a public hearing to be held on the matter of cancelling such permit or certified filing. Provided, however, that before cancelling any such permit or certified filing, the Board shall send notice of such pending cancellation hearing by certified mail, return receipt requested, to the holder or holders of any such permit or certified filing as shown by the records of the Board of Water Engineers or its successors, at the last address shown by such records, and shall also cause a notice of such hearing to be published each week for two (2) consecutive weeks in a newspaper published in each county in which diversion of such water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized to be used or proposed to be used according to the records of the Board, or, if there be no newspaper published in any such county then in a newspaper having general circulation in the county where no newspaper is published, at least thirty (30) days prior to such hearing date, and shall also give notice thereof by letter mail to all other holders of permits and certified filings in the same watershed; and the Board shall give such record holder or holders of the permit or certified filing sought to be cancelled and other persons interested in the questions to be determined at such hearing an opportunity to be heard and present evidence that water has, or has not, been beneficially used for the purposes authorized under the permit or certified filing during such ten-year period. At the conclusion of the hearing, if the Board finds that no water has been beneficially used for the purposes authorized during such ten-year period, such permit or certified filing shall be deemed as wilfully abandoned, shall be null, void and of no further force and effect, and shall be forfeited, revoked and cancelled by the Board.

"2. When the Board of Water Engineers or its successor has determined from its records that all of the public waters authorized to be appropriated under a certified filing, or under a permit issued ten (10) years or more prior to the effective date of this Act, or prior

58. Vernon's Ann.Civ.St. arts. 7519a,
7519b.

to the date of cancellation proceedings herein authorized, has not been put to a beneficial use at any time during a period of ten (10) consecutive years next preceding the effective date of this Act, or the date of the cancellation proceedings herein authorized, it may cause a public hearing to be held on the matter of cancelling that portion of such permit or certified filing which has not been beneficially used at any time during such ten (10) consecutive years, and if it should appear to the Board that the holder of the permit or certified filing has not been diligent in applying all or any part of such unused water to beneficial use under the terms of the permit or certified filing and has not been justified in such nonuse or does not have a bona fide intention of putting such unused waters to beneficial use under the terms of the permit or certified filing within a reasonable period of time after the date of such hearing, then such permit or certified filing shall be subject to forfeiture and cancellation by the Board as to such portion of such waters as to which such facts are so found. The absence from the records of the Board of proof of use of such water during said ten-year period shall be sufficient for initiating such cancellation proceedings. In determining what constitutes a reasonable period of time in this paragraph, the Board shall give consideration to expenditures made or obligations incurred by the owner of such permit or certified filing in connection therewith, the purpose to which the water is to be applied, the priority under the general law of such purpose, and the amount of time usually necessary to put such water to a beneficial use for the same purpose when diligently developed. Provided, however, that before cancelling any unused portion of a permit or certified filing the Board shall send notice of such hearing by certified mail, return receipt requested, to the holder or holders of any such permit or certified filing as shown by the records of the Board or its successor at the last address shown by such records, and shall also cause such notice to be published once each week for two (2) consecutive weeks in a newspaper regularly published in the county in which the diversion of such water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized to be used or proposed to be used according to the records of the Board or, if there be no newspaper published in any such county, then in a newspaper having general circulation in the county where no newspaper is published, at least thirty (30) days prior to such hearing date, and shall also give notice thereof by letter mail to all other holders of permits and certified filings in the same watershed; and the Board shall give such record holder or holders of the unused portion of the permit or certified filing sought to be cancelled and other persons interested in the questions to be determined at such hearing an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue in said hearing.

"If the Board should find as a result of such hearing that any portion of the water authorized to be diverted and used under such permit or certified filing has not been put to an authorized beneficial use during said ten-year period, and that reasonable diligence has not been used by the holder or holders in applying such unused portion of said water to beneficial use under the terms of the permit or certified filing, and that such holder has not been justified in such nonuse or does not have a then bona fide intention of putting such unused water to beneficial use under the terms of the permit or filing within a reasonable time after such hearing, the Board shall enter its order cancelling such permit or certified filing as to the portion of the water as to which such findings are made, and said portion of said water shall again be subject to appropriation.

"Where the holder of a certified filing or permit has facilities for the storage of water in a reservoir, the Board shall allow such holder to retain a water appropriation to the extent of the conservation storage capacity of such reservoir owned by such holder of the certified filing or permit. Notwithstanding other provisions of this Article to the contrary, no portion of a certified filing held by a city, municipal water district, town or village authorizing the use of water for municipal purposes shall be cancelled when water has been put to use under such certified filing for municipal purposes at any time during the ten-year period prior to the cancellation proceedings herein authorized.

"Failure on the part of the Board to initiate a proceeding to cancel a permit or certified filing or portion thereof in accordance with the terms of this Article shall not be construed as validating or enhancing any such permit or certified filing or portion thereof not cancelled. Once cancellation proceedings have been initiated against a particular permit or certified filing and a hearing has been held thereon, the Board shall not initiate further cancellation proceedings against such permit or certified filing for a period of not less than five (5) years after the date of such public hearing.

"3. The term 'other persons interested' as used in Subdivisions 1 and 2 of this Article shall be deemed to include any person, firm or corporation, public or private, other than a record holder, interested in such permit or certified filing, or whose interest would be served by the cancellation of such permit or certified filing in whole or in part.

"Article 7519b.

"For the purpose of this Act, the term 'Certified Filing' shall mean any declaration of appropriation or affidavit filed with the State Board of Water Engineers under the provisions of Section 14 of Chapter 171, Acts of the Thirty-third Legislature of Texas, 1913, and amendments thereto.

"Appeals from any Board order revoking, forfeiting or cancelling all or part of any permit or certified filing may be as is provided by Chapter 357, General Laws, Regular Session, Fifty-third Legislature, 1953, codified as Article 7477, Vernon's Civil Statutes of Texas, and the hearing on such appeal shall be as though the jurisdiction of the district court were original jurisdiction."

Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict, and should any section or provisions hereof be declared unconstitutional or invalid, such invalidity shall not impair any remaining sections or provisions of this Act, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions hereof regardless of the invalidity of any part.

Sec. 3. The fact that the present law does not provide for total and partial cancellation of certified filings and permits even though all or a part of the water is not being appropriated and beneficially used thereunder, the fact that a public need exists to make such water available for appropriation and beneficial use, and the further fact that the present law needs to be clarified so as to remove inconsistencies, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended; and said Rule is hereby suspended, and this Act shall become effective and be in force from and after its passage, and it is so enacted.

Passed the House, February 4, 1957: Yeas 139, Nays 4; House concurred in Senate amendments, March 6, 1957: Yeas 136, Nays 2; passed the Senate, as amended, February 27, 1957, by a viva-voce vote.

Approved April 1, 1957.

Effective 90 days after May 23, 1957, date of adjournment.